80-375

No. 80-735

Supreme Court, U. S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

WILLIAM SHAMES,
Petitioner,

v.

SYRREL LEHMAN SHAMES,
Respondent.

On Petition For A Writ of Certiorari To The Supreme Court of California

RESPONDENT'S BRIEF IN OPPOSITION

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The Respondent, Syrrel Lehman Shames, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the affirmation by the appellate and supreme courts of the State of California of the California trial court's denial of Petitioner's motion to quash service of summons for lack of personal jurisdiction in an action for dissolution of marriage.

REASONS WHY THE WRIT SHOULD BE DENIED

1. Neither the Decision Below Nor the Record Raises the Question Presented in the Petition

The sole Question Presented in the petition (p. 2) is whether the California state courts may exercise in per-

sonam jurisdiction over a nonresident, nondomiciliary without minimum contacts to the State of California. But the trial, appellate, and supreme courts in California did not decide that question in this proceeding. The facts of record will not support a determination of that question by this Court.

(1) The record reflects that the trial court denied Petitioner's Motion to Quash Service of Summons for Lack of Personal Jurisdiction based on the submitted sworn declarations of the parties. Each party submitted a declaration under oath; the trial court, at the request of Petitioner-husband, allowed additional time for supplemental declarations to be submitted; and, of the parties, only Respondent-wife submitted a supplemental declaration.

(a) Respondent-wife's trial court declarations, made under penalty of perjury, with many supporting exhibits incorporated, stated in its most pertinent parts that Petitioner-husband and she were married in California on February 22, 1977 and, again, in Nevada on May 1, 1977; that the parties resided and were domiciled in California throughout their entire marriage to date of separation in July, 1979; that during the marriage and at the time service was effected in this action on November 19, 1979, Petitioner-husband owned an interest in real estate and a leasehold in California, was doing business in California, and was employed in California. Respondent further declared her continuing residence in California; that she had never been domiciled in Texas; and that Texas was an inconvenient forum for her. Attached to and incorporated in her declaration are more than a dozen documents, some of which are signed by Petitioner-husband, support-

ing each and every one of her declarations, including husband's California earnings statements during marriage, corporate papers, marriage certificate, and California leases. Wife's declaration details many other incidents of the California residency of the parties during the marriage.

(b) Petitioner husband's only declaration states that at the time of the marriage he was a resident and domiciliary of the State of New York, but gives no address other than the address from which income tax returns were filed. Respondent-wife in her supplemental declaration states that that address is a commercial office address in New York and is not, and never was, a residence. He states that he is now a resident of Texas, but gives no residential address. He further declares that he sold his interest in a corporation headquartered in Los Angeles, California on December 31, 1979, which constitutes an admission of his business interest ownership in California on the date he was served with and accepted summons in this action which was in November, 1979.

(2) *Inasmuch as the facts before the trial court were controverted, determination of judicial jurisdiction is discretionary, and there being no showing of abuse of discretion, no reason exists for the grant of certiorari.*

As has been made evident herein, the trial court ruled on the facts presented in the sworn declarations of the parties. Opportunity was afforded Petitioner-husband to submit supplemental declarations, which he failed to do. That court then, based on the controverted and uncontroverted facts before it, simply denied the motion to quash service of summons for lack of personal jurisdiction. The

act sought to be compelled is discretionary. The burden is on the Petitioner to show that the duty sought to be enforced does not entail judgment or discretion or allege acts showing a clear abuse of discretion. Petitioner failed to make any showing of abuse of discretion.

Petitioner-husband relies on the underlying basis of the rules of jurisdiction as found in *International Shoe Co. v. State of Washington* (1945) 326 U.S. 310, 66 S.Ct. 154. A state has power to exercise judicial jurisdiction over a person if that person's relationship to the state is such as to make the exercise of such jurisdiction reasonable under contemporary standards. This relationship includes all physical and nonphysical circumstances which may serve to link a person with a state.

There would be no lack of fair and substantial justice to require the Petitioner-husband (who has never given his address other than the New York business office address in this action) to submit to personal jurisdiction in California.

The specific reference to *Kulko v. California Superior Court,* 436 U.S. 84, 98 S.Ct. 1690, can be distinguished. The *Kulko* case required, for judicial jurisdiction, sufficient contacts between the party and the state to make the exercise of such jurisdiction reasonable under contemporary standards. Those contacts exist in the subject case. Dr. Kulko had no contacts with the state other than having allowed a teenaged child to reside with the mother in the state. Sufficient evidence existed in this case to form a basis for the California court rulings that a motion to quash service of summons for lack of personal jurisdiction should be denied.

The contacts which Respondent-wife declared under penalty of perjury that Petitioner-husband had with the State of California included more than mere ownership of property or co-signing a lease. The Petitioner-husband has had the "minimal contacts" with California that are a prerequisite to its exercise of power over him according to the sworn declaration of Respondent-wife and this cause of action arises out of acts done in California. Therefore, the standards preserved in *Hanson v. Denckla,* 357 U.S. 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228, and *Shaffer v. Heitner,* 433 U.S. 186, 53 L.Ed.2d 683, 97 S.Ct. 2569, are met.

There were sufficient contacts alleged in this case to satisfy the constitutional requirements of due process. The determination was simply a matter of which party's statement was to be given greater credence. Respondent respectfully submits that the trial court exercised its discretion and, based on the law and the facts before it, no abuse of discretion was shown and affirmation by the appellate court and the Supreme Court of California was proper.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Dated: Sept. 30, 1980

Respectfully submitted,

By Lawrence H. Stotter
Attorney for Respondent